

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case No. CR 16-21
)	Milwaukee, Wisconsin
vs.)	
)	July 12, 2017
SAMY MOHAMMED HAMZEH,)	10:02 a.m.
)	
Defendant.)	

TRANSCRIPT OF BOND HEARING
BEFORE THE HONORABLE DAVID E. JONES
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government:	Office of the US Attorney By: GREGORY J. HAANSTAD PAUL L. KANTER 517 E Wisconsin Ave - Rm 530 Milwaukee, WI 53202 Ph: 414-297-4581 Fax: 414-297-1738 gregory.haanstad@usdoj.gov paul.kanter@usdoj.gov
For the Defendant SAMY MOHAMMED HAMZEH: (Present)	Federal Defender Services of Easterin Wisconsin, Inc. By: CRAIG W. ALBEE GABRIELA LEIJA JOSEPH A. BUGNI 517 E Wisconsin Ave - Rm 182 Milwaukee, Wisconsin 53202 Ph: 414-221-9900 Fax: 414-221-9901 craig_albee@fd.org gabriela_leija@fd.org joseph_bugni@fd.org
U.S. Probation Office:	MARIA J. MAHMOUDI 414-297-1432
U.S. Official Transcriber: Transcript Orders:	JOHN T. SCHINDHELM, RMR, CRR, WWW.JOHNSCHINDHELM.COM

Proceedings recorded by electronic recording,
transcript produced by computer aided transcription.



TRANSCRIPT OF PROCEEDINGS

Transcribed From Audio Recording

* * *

THE CLERK: Court calls Case No. 16-CR-21, United States of America vs. Samy Mohammed Hamzeh, here for a bond hearing. May I have the appearances, please, first for the government?

MR. HAANSTAD: Good morning, Your Honor. Gregory Haanstad on behalf of the United States. Also with me at counsel table is Assistant United States Attorney Paul Kanter.

THE COURT: Good morning to you both.

PROBATION OFFICER: Good morning, Your Honor. Maria Mahmoudi on behalf of Pretrial Services.

THE COURT: Ms. Mahmoudi, good to see you.

MR. ALBEE: Good morning, Your Honor. Mr. Hamzeh appears in person with Craig Albee, Joe Bugni, and Gabby Leija.

THE COURT: All right, Mr. Albee, Ms. Leija, Mr. Bugni and Mr. Hamzeh, good morning to you all.

We are here for a bond hearing or a hearing for me to reconsider filed by Mr. Hamzeh, reconsider my earlier determination that there were no conditions that could reasonably assure the safety of the public and appearance at future proceedings in this case.

The standard, as the briefing has pointed out -- and let me say at the outset that I compliment both parties for the

1 quality and thoroughness of your written submissions on this
2 matter. It's been very helpful to get the written submissions.
3 And I know you've had very little time to do it.

4 I wanted to say at the outset also that I will not
5 make a decision from the bench on this matter. I'm going to
6 take it under advisement. I'm not going to sit on it for a long
7 time, but it would -- I would anticipate having -- issuing
8 something in writing within a week and then you'll have your
9 opportunities.

10 My sense is, and I'm not tipping my hand one way or
11 the other, but just as a logistics matter, should I decide to
12 release I take it the United States would likely seek a
13 reconsideration by the district judge; is that correct?

14 MR. HAANSTAD: That's correct, Your Honor.

15 THE COURT: All right. So what I would do in entering
16 my decision, if it were -- and please, again, don't -- this is a
17 logistics question, I'm not tipping my hand one way or the
18 other -- but if I were to order release I would also stay entry
19 of that order so that you folks, the United States, would have
20 an opportunity to seek reconsideration by the district judge.
21 The likelihood that any decision I make would be then appealed I
22 guess is one way to put it, asked for to be reviewed by the
23 district judge is another reason why I want to put something in
24 writing so that the district judge would have the benefit of my
25 thinking and not just have to base it on a transcript which may

1 not be as precise as the parties deserve in this case.

2 So, having said all that, let me set out how I would
3 like to go forward this morning. And if you folks want to do
4 something different that's fine.

5 Let me hear -- it is the motion of Mr. Hamzeh. So
6 following the usual tradition, let me hear first from
7 Mr. Hamzeh. But recognizing that I did receive and review your
8 reply brief that you filed last night and if you want to just
9 simply focus on what you think are the main points that you want
10 me to consider. Then I'll hear from the United States. I'll
11 also then hear from you, Ms. Mahmoudi. And then I'll let you
12 folks, as the moving party, finish up.

13 It's a little bit of an oddity because the United
14 States, as defense points out, as Mr. Hamzeh points out, the
15 United States has the burden here to show by clear and
16 convincing evidence that there are no conditions that would
17 reasonably assure the safety of the public. And that is by far
18 my primary concern. The flight risk aspects don't compare to
19 the issues that I think are important that pertain to risk to
20 the community. I'm not saying that there is no flight risk
21 here, but I do think I've got tools at my disposal to deal with
22 flight risk issues. My concerns are focused primarily on the
23 safety to the community issues.

24 So the United States does have that burden, but since
25 you're the moving party I'll let you guys go first and finish

1 up. Take your time, you don't need to rush it. I do have a
2 hearing after this but if I need to I can have them wait and
3 we'll give you an opportunity to make your full record.

4 Let me also, just because folks who aren't necessarily
5 here all the time are here, I am in receipt of a Pretrial
6 Services report that does recommend release on conditions. Just
7 so folks know, that -- when Pretrial Services does a report like
8 this, they are focusing on the background, primarily the
9 background of the individual and are not making an assessment or
10 a recommendation based on the charged offense or the conduct
11 charged in the offense.

12 Is that right, Ms. Mahmoudi?

13 PROBATION OFFICER: Yes, Your Honor.

14 THE COURT: All right. So, while I do -- and I have a
15 great deal of respect for the recommendations and the assistance
16 provided by Pretrial Services, it should not be -- their
17 recommendation should not be misinterpreted as having made some
18 sort of assessment of the weight of the arguments made by the
19 parties in their briefing.

20 All right. I've talked enough. Let me hear first
21 from Mr. Hamzeh's counsel, then the United States, Ms. Mahmoudi,
22 and then from Mr. Hamzeh.

23 MR. ALBEE: Judge, as the court knows, on I guess
24 Monday, Monday night, the government filed its response. In
25 putting together our reply yesterday -- and that response

1 referred at times to the post-arrest statement that Mr. Hamzeh
2 made --

3 THE COURT: Right.

4 MR. ALBEE: -- and relied to some extent on that, that
5 caused us to review the post-arrest statement closely. And
6 there are portions of that that we wanted to bring to the
7 court's attention.

8 Because of the short timeframe yesterday and the
9 tediousness of going back and looking at video, we didn't feel
10 that we wanted to file it -- you know, as early as possible and
11 we weren't able to identify specifically what minimal portions
12 we'd like the court to review. And I recognize this isn't
13 ideal, but we have I think five or six snippets from that video
14 that we'd like the court to review. They total about 15 to 17
15 minutes, I think. Somewhere in that area. Unfortunately there
16 are mentioned within those videos of the informants' names. And
17 so while we certainly wouldn't have any problems playing the
18 videos in open court, there remains a protective order and I
19 understand the government would object to playing those videos
20 in open court.

21 So I guess it would be my suggestion at the outset,
22 and I understand this isn't ideal, that we play those in
23 chambers and have the court -- and again I think it's about 15
24 to 17 minutes. It's about three hours total, the post-arrest
25 statement. But obviously we don't need to have the court watch

1 the whole thing.

2 THE COURT: Well, let me ask if you can go forward
3 without me having first seen it because, as I say, I'm not going
4 to make a judgment from the bench today. I'll let you guys talk
5 for a second.

6 (Brief pause.)

7 MR. ALBEE: That'll be fine.

8 THE COURT: Yeah. So, here's what I ask you to do is,
9 identify for me sort of the time hacks that you want me to focus
10 on. And I think in fairness if the United States wants me to
11 focus on other time hacks -- because as I think you've done a
12 good job of pointing out, Mr. Albee, context matters in this
13 case -- but in fairness context matters as much to the United
14 States as it does to Mr. Hamzeh.

15 MR. ALBEE: And we certainly don't object to that.

16 THE COURT: Okay.

17 MR. HAANSTAD: Your Honor, I'm wondering if it might
18 make sense to proceed this way. Maybe we could enter the
19 entire --

20 THE COURT: Right.

21 MR. HAANSTAD: -- interview into evidence, each side
22 can refer to that interview, can direct your attention to
23 particular portions that it would like to emphasize and you can
24 then review it on your own.

25 THE COURT: That makes sense. And what I will allow

1 you guys to do is simply at the conclusion of the hearing, by
2 tomorrow sometime, just send me an e-mail with the time hacks,
3 make sure you cc the other side, send me an e-mail with the time
4 hacks that you would like me to focus on. More likely than not
5 I'll probably watch the majority of the statement, but I would
6 appreciate the assistance of counsel in focusing on particular
7 time hacks that you think I should be focusing on. All right?

8 All right, go ahead, then, Mr. Albee, please.

9 MR. ALBEE: I recognize the court is fully aware of
10 this, but it does bear repeating that this is a gun case.
11 Technically it's probably a tax case under 5845. It's a failure
12 to pay the taxes on a machine gun which aren't necessarily
13 unlawful to possess. Under certain conditions people can.
14 Mr. Hamzeh was not a prohibited person. That is, he's not a
15 felon. He has no record at all in fact. This isn't a
16 presumption case so, as the court already mentioned, it is the
17 government's burden to prove by clear and convincing evidence
18 that he presently poses a danger.

19 Pretrial Services has recognized that I guess by
20 virtue of character, personality, background Mr. Hamzeh is a
21 person who could be released into the community and doesn't pose
22 a flight risk. There's a psyche eval that I think would support
23 what Pretrial Services is saying in terms of there's not
24 something about Mr. Hamzeh's mental health that would pose any
25 risk here. He has a place to live, he has ties to Milwaukee, he

1 has family support. He has a job waiting for him and, as we
2 have argued, minimal guidelines. He also has a strong
3 employment history. He's not someone who's been idle in his
4 life.

5 In terms of flight risk. The court has said that's
6 not its main concern, but I, you know, as the court suggested,
7 GPS, the notoriety of this case, taking his passport, those
8 clearly address any flight risk here.

9 The supposed risk I think proffered by the government
10 here is that machine guns are dangerous. That's what the charge
11 is: machine guns are dangerous. Well, again, we're
12 forward-looking here. And there's no risk of Mr. Hamzeh having
13 a machine gun.

14 As we've argued strongly in our entrapment defense
15 that we've proffered to the court, he didn't have the ability,
16 the money, the opportunity to ever get machine guns. And I mean
17 we can flat-out say he has no desire to. But in terms of again
18 forward-looking, there's no access to these things. He doesn't
19 have one, he won't get one. He's never owned a weapon.

20 After his arrest there was a thorough search of the
21 Hamzeh home. There were no weapons in the home or anything else
22 that created a danger. They searched his phone and computer and
23 those didn't turn up anything that would suggest any other
24 dangerousness; no memberships in extremist organizations, no
25 communications with extremist organizations. So --

1 THE COURT: Talk to me about that because I -- I do
2 take the thrust of your argument being that to the extent
3 Mr. Hamzeh was -- had identified before what you say is the sort
4 of decision not to go forward with the attack, but to the extent
5 he had identified the particular target it was because he viewed
6 the target as in some way being in cahoots with ISIS to bring
7 discredit to the prophet, is that basically your reading of it?

8 MR. ALBEE: Again, I think the court understands this,
9 relying on the evidence that we've received rather than making
10 our representations for Mr. Hamzeh is, we have 3 1/2 months of
11 contacts and Mr. Hamzeh at that point it appears -- the
12 informants are reporting back saying there's no discussion of
13 any attacks, I mean it seemed completely at a dead end.

14 And then the recordings basically come to a halt.
15 There aren't reports to the FBI. And then suddenly there's this
16 idea about the Masons. And we know from the post-arrest
17 statement and some snippets from the recorded conversations that
18 a number of videos have been watched in which the Masons have
19 been associated in Mr. Hamzeh's mind with ISIS, with the devil,
20 doing things like eating people's hearts. And I think the only
21 reasonable conclusion there is that this has been some
22 brainwashing that's gone on with the informants that have, you
23 know, put this idea -- because there's been no talk of the
24 Masons prior to that time.

25 But there is -- there is nothing in the computers in

1 the house or anything else that would show that any -- anything
2 there was because Mr. Hamzeh was part of some group or anything
3 else. It was the two informants who were with him on a daily
4 basis in his head providing this echo chamber.

5 And as we've alluded to in our brief, you know, there
6 are plenty of psychological studies talking about how difficult
7 it is for somebody to break out of this kind of echo chamber
8 when two people who are surrounding you at all times are filling
9 your head with certain ideas.

10 Nonetheless, in assessing this risk the court has to
11 look at -- and we provided the transcripts to show that
12 Mr. Hamzeh saw the light. And the court will see that more in
13 the post-arrest statement that we'll provide to the court or the
14 snippets that I will direct the court to. So this wasn't an
15 after-the-fact claim by Mr. Hamzeh saying, you know, well, I was
16 going to get out of it, I wasn't interested.

17 I mean he is adamant. It is heartfelt, it is angry.
18 He is saying this is against religion, you people cannot do
19 this. He goes so far, he gets so wrapped up and upset that he
20 says "goddamn your religion" because he's -- he's angry that
21 these people won't listen to reason.

22 In the post-arrest statement --

23 THE COURT: Just a second. That's a pre-arrest
24 statement; is that correct?

25 MR. ALBEE: Yeah. There are contemporaneous

1 recordings that show that Mr. Hamzeh adamantly refused to go
2 through with this. His friends -- and he began at the
3 beginning: "I don't want to hear you telling me I'm scared."
4 And, of course, that's what they do. They try to say you're
5 scared. They try to intimate that the Imam that he talked to
6 isn't reliable because he only recently converted from -- they
7 do everything to undermine his best instincts.

8 And you'll hear in the post-arrest statement as well
9 that Mr. Hamzeh said: "They told me not to talk to anybody;"
10 that it was "just between us and we shouldn't talk to anybody."

11 And he told them he wanted to talk to an Imam and they
12 didn't want that. And he said, "I got up that day and I'm like
13 I can't tell them I have to go to the Imam. I didn't want to do
14 it. I went to the Imam." And he got exactly what he expected
15 to get from that person, that don't do this. And then he talked
16 to a second Imam who said don't do this.

17 And that's what -- that's what Mr. Hamzeh wanted to
18 hear. And that comes through very clearly in the post-arrest
19 statement. And it's what we want people to do, to follow our
20 spiritual leaders. He went to the spiritual leaders looking for
21 moral guidance and he got it.

22 At the same time, this was so difficult for Mr. Hamzeh
23 to do and showed his character so strongly, because they were
24 trying to isolate him and he broke through that by going to see
25 his Imam and then following that advice and even in the face of

1 continued blow-back from these informants he continued to fight
2 and do what's right and say I am not doing this.

3 The government wants to focus on the words that were
4 prior to that. Fear is not a consideration under the Bail
5 Reform Act. It was over by the time this happened. They go
6 back to earlier conversations. And we talked about those in our
7 brief and I think addressed those appropriately about going to
8 Israel. And, you know, it's clear because there's no evidence
9 of Mr. Hamzeh ever getting a plane ticket or anything else even
10 though he was telling his informant friends that he was all set
11 to fly to Jordan and that he had all sorts of money saved up.
12 He was -- he was just BS-ing them.

13 He is, as we suggest in our reply belief yesterday, a
14 Palestinian Walter Mitty who is talking about some grandiose
15 ideas about how he'd fight Israeli soldiers. He wasn't going to
16 do that. He was -- he made no plans. He did nothing to take
17 any steps to that and there's not a shred of evidence to support
18 any such suggestion.

19 So for this four months there is just about daily
20 contact. One of these informants -- I mean we don't have
21 anything about what the motivation for these informants working
22 for the government is, but it has to be either substantial or
23 the person just has to have a real -- what's the word I'm
24 looking for -- can't think of the word, but this person went to
25 work at the place where Mr. Hamzeh worked and worked there --

1 THE COURT: Right.

2 MR. ALBEE: -- for months. I mean who does that
3 without incentive. I mean it's one thing to go set up a single
4 drug deal like we frequently see in this court for somebody to
5 get out of something, but to go to work a job you don't --
6 aren't otherwise working to be close to somebody and to be in
7 their head on a daily basis --

8 THE COURT: I understand those points. I do have to
9 say that the motivations of -- and we'll call them Mike and
10 Steve, is that -- that's what we sort of agreed to call the
11 confidential informants? That's of I guess less moment to me
12 because I don't -- those go to maybe entrapment and things of
13 that nature and that's not my -- that's well outside my
14 authority.

15 I'm focusing on -- here's the crux of my issue, is
16 that I have these very strong statements on January 19. And
17 tell me if I get the dates right. I think it's January 19 where
18 there's the tour of the Masonic Center and statements of the
19 kind that the United States, you know, identified in the
20 complaint in this matter that are frankly horrific. And then
21 I've got about five days later, on January 24, a complete sort
22 of turnaround, "no, I don't want to do this."

23 So I mean you both tell me, well, look at his
24 statements. And I've got statements from Mr. Hamzeh that would
25 support release and statements from Mr. Hamzeh that would

1 support not release. So why should I credit -- what basis in
2 reason or law would I credit the statements that would auger in
3 favor of release? And how would I respond to the statements
4 that say, boy, this is someone that you just can't reasonably
5 assure the safety of the public about?

6 MR. ALBEE: The statements on January 19th aren't
7 followed up with actions. The words on January 24th, he
8 disavows where he was earlier and takes the action to say we're
9 not doing this, of stopping it with his -- with his friends.

10 You know, here in the post-arrest statement as well.
11 The post-arrest statement, as well as the statements on January
12 24th, show how internalized Mr. Hamzeh's feelings are that this
13 is wrong and he's not going to do it. His post-arrest statement
14 talks about how he thought about -- you know, he had been -- his
15 head had been filled with all these ideas of the Masons being
16 devils and eating hearts and doing these horrific things and
17 being ISIS and all the horrible things that go along with that.
18 And he says in his post-arrest statement about "I went there and
19 I saw they're humans like the rest of us. They're not these
20 people."

21 I mean he -- it all -- it all was developing to where
22 he got on January 24th of doing the right thing. It was the
23 information he was learning and the information he was acquiring
24 so that he would do the right thing and adamantly said -- you
25 know, set forth that he wasn't going to do this.

1 And again I think other parts of the context the court
2 can consider in that is that he doesn't -- he isn't part of a
3 group. He wasn't -- he isn't, you know, hadn't joined some
4 extremist group or anything. It was these two informants. And
5 moving forward he's not going to be with these informants.

6 His awareness and time in jail, you know, has been --
7 you know, it sounds like -- I mean to tell you the truth he had
8 the smack in the face and stopped it because he had been smacked
9 in the face and went to the Imam. But since then it's jail,
10 arrest, newspapers, family, shame, humiliation, all those kinds
11 of things. And those all fit into the mix as to why you take
12 his words at face value from January 24th.

13 THE COURT: And I take it the same sort of argument
14 would go to the statements from approximately November 6th and
15 November 12th of 2015, because in those time periods he again is
16 making statements about -- oh, no, those are -- those are
17 statements about killing soldiers. And then, yeah, the November
18 statements are about killing -- going and -- to Israel or to
19 Palestine and killing Israeli soldiers, Jewish people.

20 MR. ALBEE: Yeah. And, Judge, no step is ever taken.
21 Again, the leap from pontificating in Milwaukee's coffee shops
22 to going over there. And, you know, I mean I think we've
23 probably all heard, whether it be the Persian Gulf War or
24 something, that whenever the United States is in conflict with
25 somebody we hear people who, you know, are not criminals or

1 anything say awful things about whatever other ethnicity that
2 the United States is fighting and it hardly -- you know --

3 THE COURT: Right.

4 MR. ALBEE: -- it hardly means they're going to take a
5 trip to do such things.

6 As I say, I mean I think the court -- the court is
7 obligated to consider the weight of the evidence, although it's
8 the weakest factor. We've expressed why we think that an
9 entrapment defense is strong, including the lies about the
10 Masons, this two on one, and the fact that there is no ability
11 to buy a machine gun by Mr. Hamzeh absent the government
12 intervention.

13 We have a good release plan for the court. I haven't
14 heard the court express any concerns about that or the fact that
15 he could work and live with family.

16 But I think, you know, clear and convincing is a high
17 burden. And it again is that he actually poses a danger right
18 now, not at some prior time. The things you talked about for
19 flight risk, the family support and GPS, those also reduce any
20 potential current danger. The fact that he has no ability to
21 get guns now; the fact that he saw the light.

22 So I think those are all important. And at this point
23 the just thing to do is, the government doesn't meet its burden,
24 is to release him. He needs to work with his lawyers, he
25 shouldn't be at risk of over-serving his time, and I don't think

1 the government meets its burden on clear and convincing and the
2 court hasn't expressed any concerns about the flight risk.

3 One moment, Your Honor.

4 (Brief pause.)

5 MR. ALBEE: Okay. Thank you.

6 THE COURT: Yeah. Just one question I was going to
7 ask about the release plan. I don't recall if you folks
8 identified a potential person under 3142(c)(B)(i) that is a
9 custodian who would assume supervision and report any violations
10 of release conditions? Have you folks put forward a (c)(B)(i)?

11 MR. ALBEE: We had not. I'm sure his parents --
12 either of his parents would do so.

13 THE COURT: Well, that would be something -- again, I
14 am not tipping my hand one way or the other, but if I were to
15 do -- if I were to release in this instance I would need to have
16 identified a (c)(B)(i), or (i), however you want to refer to it,
17 a custodian in this case.

18 MR. ALBEE: We'd be glad to do that. And my
19 suggestion is when we submit the information to the court
20 regarding which parts of the video we'd like the court to watch
21 that we'll also identify a third-party custodian. Unless the
22 court would prefer to do that through Pretrial Services.

23 THE COURT: No. You can certainly suggest it. And
24 then Pretrial Services, if I do order release then they can take
25 whatever appropriate investigation steps they need to to confirm

1 that that would be an appropriate custodian.

2 All right. And just before I let you go and have the
3 United States, my understanding is that there were two weapons
4 here, there are three weapons charges but one of those is a
5 silencer on one of the purchased weapons, correct?

6 MR. ALBEE: It's a silencer that actually is I think
7 sold attached to the machine gun. Yes.

8 THE COURT: And we keep referring to, but were there
9 two HP -- what are the two weapons that were sold here?

10 MR. ALBEE: They're two machine guns. I don't know.

11 THE COURT: Well, yeah, but -- are they, in fact --
12 because I know that there was -- Mr. Hamzeh had talked about
13 getting a pistol, but there's no question they were two
14 automatic weapons?

15 MR. ALBEE: That's correct.

16 THE COURT: Okay.

17 MR. ALBEE: And there's no indication that at any time
18 he ever purchased any other gun.

19 THE COURT: Got it. All right.

20 All right. So let me just before I turn to the United
21 States sum up my understanding. This is not a case -- and I
22 invite the United States to correct me, but this is my sort of
23 preliminary understanding of the facts. This is not a case
24 where we had a young person seeking to join a terrorist group, a
25 specific group like Hamas or ISIS. This was a young man who was

1 interested in, at least based on certain statements made in the
2 January time period, interested in frankly killing a number of
3 persons because he thought that they were associated with ISIS
4 and that ISIS was, in fact, through its actions bringing
5 discredit to the Islamic community. Is that your understanding
6 of the situation or do you folks have a different view?

7 MR. HAANSTAD: I would say that Mr. Hamzeh was a
8 classic lone wolf. There was some indication that dating back
9 to October of 2015, Mr. Hamzeh was engaged in conversations with
10 one of the confidential sources, Steve, and was expressing an
11 interest in not only going to the Middle East but joining Hamas
12 once he's there.

13 THE COURT: Okay.

14 MR. HAANSTAD: But then as we went into November,
15 December and certainly by January, again I'd classify him as a
16 lone wolf.

17 THE COURT: Okay. All right. Well, let me hear a
18 response. And I do also want to hear -- it is also part of my
19 concern that Mr. Hamzeh has been detained on my order for about
20 16 months now and he's an innocent person under the law. That
21 causes me a great deal of concern. So if you would -- I did see
22 that you folks have a different sort of sense of sort of
23 calculations as far as guideline range, but this matter it is my
24 understanding isn't going to go to trial until January; is that
25 correct?

1 MR. HAANSTAD: I believe February.

2 THE COURT: February. All right. So I mean I know
3 that no one here, most of all the United States Attorney's
4 Office, is not interested in running a Kafka judicial system
5 where people stay in pretrial detention longer than their
6 ultimate sentence. So if you could address that aspect and
7 whether I should be or should not be concerned about that. But
8 include addressing that.

9 Also if you would address as part of your presentation
10 the thoughts or the recommendations or the conclusions of
11 Dr. Robbins. And then I'll hear, of course, anything else that
12 you think I need to think about in making my decision.

13 MR. HAANSTAD: First of all, with respect to the
14 length of detention, this case was designated complex at the
15 request and agreement of both parties at the outset. Both
16 parties recognized due to the volume of discovery in the case,
17 particularly the volume of recorded conversations that are going
18 to have to be translated and transcribed, that this was clearly
19 a case that qualified for complex designation. I'd also note
20 that the parties' request for that February trial date was a
21 joint request.

22 THE COURT: Right.

23 MR. HAANSTAD: You're right, everyone has an interest
24 in ensuring the case moves along as quickly as possible,
25 particularly when a defendant is in custody. But I view that as

1 a separate question, an important one but separate from the bond
2 question which focuses simply on danger to the community and, to
3 a lesser extent in this case as you've noted, flight risk.

4 THE COURT: Fair enough. Okay. And I do ultimately
5 agree. I mean it is something that I would need to address.
6 But if I were to conclude that there were no conditions that
7 reasonably assured the safety of the community, I could not let
8 a concern about length of incarceration and the big-picture
9 fairness of that trump safety to the community. So I do agree
10 with that as an ultimate sort of how I have to make a decision.

11 MR. HAANSTAD: Your Honor, I thought I would start
12 with Mr. Albee's characterization of this case as a gun case.
13 That's true, but it's also a factor that weighs in favor of
14 detention. It's not a presumption case, but in 3142(g)(1) which
15 directs the court to look at the nature and the circumstances of
16 the offense, firearms offenses are among a very small number of
17 particularly dangerous offenses, they're identified as
18 weighing -- a factor weighing against pretrial release.

19 And in this case, of course, it's not just possession
20 of a firearm, but it's possession of a particularly dangerous
21 type of firearm; in fact, two different types of firearms.

22 As the court's probably aware maybe in the lay sense
23 it looks like we have two firearms here, two machine guns and a
24 silencer, but a silencer is actually defined under Section
25 5845(a) of Title 26 as a firearm, thus the separate charge for

1 that.

2 THE COURT: Right.

3 MR. HAANSTAD: So the nature of the firearms that are
4 possessed heightens the danger that is posed and again is a
5 factor that weighs heavily against pretrial release.

6 But the seriousness of the offenses here and the
7 danger that they suggest is especially heightened by the uses to
8 which Mr. Hamzeh intended to put those weapons.

9 Mr. Hamzeh, it's clear from the recorded conversations
10 that he had with the confidential sources, particularly the
11 recorded conversation that we've been talking about the most,
12 the one from January 19th of 2016, that Mr. Hamzeh devised and
13 planned this attack on the Masonic temple and he -- according to
14 that plan he and two confidential sources would go to the temple
15 and shoot and kill everybody that was there.

16 This was a deliberate and calculating plan that
17 Mr. Hamzeh attacked -- or, I'm sorry, plan of attack that
18 Mr. Hamzeh devised. He assigned roles for both of the
19 confidential sources telling one of them that that source would
20 stay on the main level. His first order of business was to
21 shoot and kill the receptionist -- in his words, to shoot her
22 two times -- two or three times in the stomach so there'll be no
23 blood, slouch her forward as if she's sleeping in her chair.

24 Mr. Hamzeh also identified for confidential source
25 number 2, the person we've referred to as "Mike," what his role

1 was going to be. He and Hamzeh would go to the third floor
2 where there was a meeting room, would enter the room, spray it
3 with bullets, keep shooting until everyone in that room was
4 dead, and then would run down, join source number 1 and flee.

5 And Mr. Hamzeh made no secret about the fact that he
6 expected to inflict mass casualties here. He said that if he
7 killed 30 people, which is what he expected, he would be
8 100 percent happy.

9 Mr. Hamzeh also went so far as to detail how it was
10 that they would flee. Particularly important in that regard was
11 the use of silencers. There was some suggestion I believe in
12 the reply brief that Mr. Hamzeh never asked for a silencer.
13 When he was planning that attack and when he was talking about
14 it on January 19th, in three or four different places he
15 specifically talked about using a silencer and the fact that
16 using a silencer would allow them to escape and evade detection
17 by the Milwaukee Police Department.

18 Mr. Hamzeh in that same January 19th conversation
19 referred to this attack as a "hit." Once executed, it would be
20 known all over the world. He also told sources that the hit
21 would, quote: inspire additional attacks in the United States.

22 According to Mr. Hamzeh, "This way we will be igniting
23 it, we will be marching at the front of the war."

24 And despite all of this and despite all of the similar
25 statements that Mr. Hamzeh made to the confidential sources that

1 are laid out in the government's response, Mr. Hamzeh now
2 continues to maintain that he's not a flight risk. And he
3 maintains that basically for two reasons, the first of which is
4 that he stepped back from this plan ultimately.

5 The second reason is that, you know, he claims to have
6 been manipulated and led by these confidential sources. And I
7 know that you've indicated that that's an entrapment argument.
8 And it basically is. And I think that that, as I think we
9 mentioned in our brief, is quintessentially a jury question.
10 It's very fact dependent and maybe not strictly speaking for
11 your decision.

12 But as to the stepping back, when he talked to the
13 confidential sources Hamzeh indicated there were two reasons
14 that he was stepping back from this plan, the first of which,
15 what he called reason number one, the primary reason, was that
16 he was afraid that the information about the attack had been
17 leaked and that they would be caught.

18 Now, he also said that he sought the advice of
19 religious counsel, Imams, two of them, who told him that it was
20 wrong. But that Hamzeh needed two Imams to tell him that mass
21 murder was wrong is, first of all, just not very believable.
22 And to the extent that Hamzeh actually did need these two Imams
23 to tell him that mass murder was wrong, that too shows that
24 he's -- he's dangerous and presents a danger to the community.

25 THE COURT: You know, I wonder about -- and again I'll

1 put to you the same question I put to Mr. Albee. I'm trying to
2 decide which of the statements I should be more concerned about.
3 Certainly if it had been the case that Mr. Hamzeh had on January
4 19th told his two confidants, hey, I just talked to my Imam and
5 he says not to go forward with this, then on January 24 he's
6 saying let's go to the Masonic temple and shoot people, you
7 would be arguing with a later-in-time statement really is the
8 better view into his mind.

9 Here we've got the opposite situation where he makes
10 an earlier statement about an intent, but then a later statement
11 that suggests that he's no longer wanting to go -- and reading
12 the transcript fairly, rather forcefully saying that he does not
13 want to go forward with this; that this will be haram; that this
14 will bring discredit on his religion. I mean why -- what are
15 some -- why should I discredit that I guess? Or why should that
16 not outweigh Mr. Hamzeh's earlier statements that are without
17 question horrific and would deserve detention?

18 MR. HAANSTAD: Well, I would say -- I would say two
19 things. Mr. Hamzeh, first of all, made clear that had he not
20 been told by the Imams that this was wrong he fully intended to
21 carry out this attack. He made no secret of that when he talked
22 to agents in his post-arrest statement.

23 He also said in that statement that he didn't care
24 about laws, government, police, jails, none of those things were
25 going to stop him. All he cared about was what these Imams told

1 him.

2 But I think, also significantly, there's no dispute
3 that after making those statements and supposedly backing away
4 from this plan Mr. Hamzeh days later -- a day later I think it
5 was -- goes forward and actually obtains these two machine guns
6 and silencer.

7 THE COURT: Do you dispute the account that Mr. Hamzeh
8 claims that acquisition of at least his weapon was for purposes
9 of self-defense? Or maybe not in the strict sense of
10 self-defense, but to the extent that there was going to be some
11 rising anti-Muslim animus, he wanted a weapon to protect
12 himself? Do you dispute that characterization of his intent for
13 the purchase -- not that it would necessarily excuse it, but it
14 puts -- obtaining a weapon for a defensive purpose I think the
15 United States would agree is different from obtaining it with
16 the purpose of going out and killing 30 people ostensibly.

17 MR. HAANSTAD: It is, but the nature of the firearms
18 here --

19 THE COURT: Fair point.

20 MR. HAANSTAD: -- these are offensive weapons, not
21 defensive weapons. And, in fact, I know that the defense
22 mentions the Second Amendment, protecting individuals' rights to
23 possess firearms for purposes of self-defense. Well, machine
24 guns are specifically excluded from that protection specifically
25 because they're not defensive, they're offensive weapons.

1 THE COURT: Uh-huh.

2 MR. HAANSTAD: And, you know, there's also something
3 to be said I think for the fact that Mr. Hamzeh doesn't appear
4 to have a good-faith belief that there's some sort of imminent
5 threat by a couple of people. He's talking about arming himself
6 with this offensive weapon and basically looking for
7 provocation.

8 THE COURT: Okay. Address if you would Dr. Robbins'
9 opinion. And in the interest of disclosure I do think it's
10 always better to get these things in the open. I may have in my
11 prior life have retained Dr. Robbins as an expert when
12 representing inmates on conditions of confinement cases. These
13 were cases that involved prolonged periods of solitary
14 confinement and Dr. Robbins provided opinion on the effects of
15 prolonged periods of solitary confinement on individuals and
16 things like that.

17 So I don't -- I will tell you, I just wanted you folks
18 to know that I may have retained Dr. Robbins in the past. I
19 know certainly my office did. But I will also tell you that it
20 was on a completely different subject matter and it would not
21 lead me to be swayed one way or the other about -- or give undue
22 weight to Dr. Robbins' opinion.

23 But at this point in the record I do have an opinion
24 from -- from a mental health professional and I don't have
25 anything from the United States on that yet. What I'm curious

1 about knowing is does the United States feel like -- feels like
2 it needs an opportunity for a counter-opinion or are there
3 problems that you see in Dr. Robbins' opinion that should sort
4 of drain it of any sort of weight in this case?

5 MR. HAANSTAD: If I could, maybe we'll discuss that
6 among --

7 THE COURT: Please.

8 MR. HAANSTAD: -- on the government's side a little
9 bit later whether we feel the need to do that. But there are
10 some problems that I've identified just from Dr. Robbins' report
11 itself.

12 First of all, this report was prepared following an
13 interview of Mr. Hamzeh as I recall somewhere around 15 months
14 after he was arrested, after the post-arrest statement. And I
15 think in large part for that reason more weight should be given
16 to the contemporaneous statements of Mr. Hamzeh that he made
17 during his post-arrest statement than what he told this
18 defense-retained expert more than a year later.

19 Also, most of -- and it's in part the nature of these
20 things I suppose, but most of Dr. Robbins' -- most of the memo
21 talks about things that Mr. Hamzeh himself self reported. And
22 from those things Dr. Robbins concludes, for example, that
23 Mr. Hamzeh appears to have a strong sense of empathy; that he's
24 sympathetic to other people; has a strong conscience.

25 Those things are difficult to reconcile with some of

1 the things that Mr. Hamzeh said and intended to do in January of
2 2016. And as a person with a strong conscience, a strong sense
3 of empathy wouldn't talk about going in, shooting a receptionist
4 in the stomach, wouldn't talk about going in and hoping to kill
5 everybody in the Masonic temple, hopefully 30 people.

6 And it seems -- there's also part of the report that
7 discusses the fact -- again, self reported by Mr. Hamzeh -- that
8 he's not a leader, he's a follower; always trying to satisfy his
9 peers. But when you listen to some of the recorded
10 conversations that Mr. Hamzeh had with these confidential
11 sources including the January 19th conversation, it's clear that
12 he was leading that effort, he wasn't being manipulated, he
13 wasn't being led around by either of these confidential sources.
14 So that too is inconsistent I think with Dr. Robbins' report.

15 And I discussed a little bit at the end of the
16 government's response this notion that Dr. Robbins had that
17 really this was all -- this was all talk and that when
18 Mr. Hamzeh and others talked about killing people in the Middle
19 East, really that's the equivalent of a young Green Bay Packers
20 fan talking about killing the Vikings. And there are all sorts
21 of reasons why this is obviously much more serious than that.

22 THE COURT: Right.

23 MR. HAANSTAD: If you had a statement from a
24 12-year-old Packers fan that he not only wanted to kill the
25 Vikings but he recruited accomplices to go and kill Vikings, he

1 went to Minnesota, toured the team's facility, got a sense of
2 its schedule, got a sense of the layout of the facility,
3 identified particular people that had to be killed first,
4 explained how they were going to be killed, and then, again, not
5 insignificantly, followed all that up by going and purchasing
6 the very weapons that he said he was going to use in that sort
7 of attack --

8 THE COURT: Right.

9 MR. HAANSTAD: -- it would be a different story.

10 If I can just have a minute, Your Honor.

11 THE COURT: Of course. Of course. Take your time,
12 guys. Please. Thank you very much, Mr. Byal.

13 (Brief pause.)

14 THE COURT: While you're thinking of what you want to
15 say, I'd also like you folks to consider -- because I am -- I
16 think you make some very good points about what Dr. -- about
17 Dr. Robbins' conclusions.

18 But they also point out I have to take Mr. Hamzeh for
19 his propensity to cause haram to the community as he sits today,
20 not as he sat in January. And maybe he's still the same person
21 with the same sort of capacity for harm to the community that he
22 was then, but maybe he's not. And so I would like your
23 thoughts, and you can perhaps provide them to me when you
24 provide the time hacks, on whether it makes sense to send
25 Mr. Hamzeh to Butner to have an evaluation of him done there so

1 we can get the benefit at least of one -- I'm not saying that
2 would be dispositive, ultimately it's my decision -- but, again,
3 someone who is not necessarily associated with the defense and
4 get their view as to Mr. Hamzeh's capacity for creating harm and
5 danger to the community.

6 I don't ask you to react. I don't think it's fair to
7 ask you to react immediately to that. I want you folks to have
8 a considered thought/opinion on that. But that was one of the
9 things that I was considering was trying to get another
10 viewpoint at least on where he sits today as opposed to where he
11 was some number -- almost a year ago.

12 MR. HAANSTAD: I appreciate that, Your Honor. My
13 only -- I think that may well be a good idea, we'll consider
14 that and submit something.

15 THE COURT: You don't have to tell me it's a good idea
16 or a bad idea, that's fine.

17 MR. HAANSTAD: But it does seem -- maybe this is
18 obvious, but you talk about these two different time periods,
19 say January of 2016 and February or so of the following year
20 when the report was completed.

21 I understand that the relevant inquiry is the danger
22 that Mr. Hamzeh poses today rather than in January, but it's
23 certainly the danger that he posed in January, the things that
24 he did, the things that he said. The things that he planned and
25 the actions that he took back then are still relevant to the

1 danger that he presents today.

2 THE COURT: Absolutely. No, you know, all the time I
3 have to make decisions based on basically a person's resume,
4 what they have said and done in their past. That can include
5 criminal history, but it just as aptly applies to statements of
6 intent that an individual made. So I -- I absolutely agree.

7 And that's why I want to stress that if I were to take
8 the step of having a referral -- a further psychological
9 referral, that would not be outcome determinative. It would be
10 simply a data point for me to consider, but ultimately it would
11 be my responsibility to make the decision on release.

12 So even if they were to say, oh, no, he's completely
13 changed, I may not credit that because I have to take account
14 the very serious nature of the statements and the actions -- it
15 wasn't just statements but actions that constituted not just the
16 tour but, as you have pointed out, Mr. Haanstad, the ultimate
17 acquisition of two very dangerous firearms.

18 MR. HAANSTAD: Coupled with an implausible
19 explanation, at least from the government's perspective.

20 THE COURT: Fair enough. As to why he obtained those
21 weapons. All right. Was there anything further that you wanted
22 me to think about?

23 MR. HAANSTAD: You know, the only other thing that I
24 would note -- and this relates a little bit to the entrapment
25 issue but also to the nature of the offense.

1 THE COURT: Sure.

2 MR. HAANSTAD: I know that the government's clips that
3 it's going to submit focus principally on this issue of
4 leadership by Mr. Hamzeh compared to the two confidential
5 sources. The fact that he did play this leadership role, that
6 it was him devising the plan, directing both of these sources,
7 that's evident not just from that January 19th transcript and
8 from earlier transcripts -- earlier recorded calls, but it's
9 also clear from the statement that Mr. Hamzeh provides after
10 being arrested.

11 You'll see -- and I think there's some discussion of
12 this in the parties' respective submissions. But the defense,
13 for example, says that in that post-arrest statement Mr. Hamzeh
14 indicated that this was all Mike's idea. Well, that's true.
15 But that's also about 15 minutes into this lengthy interview.
16 And what happens and what you'll see is that for the first 30
17 minutes or so Mr. Hamzeh is denying that he was up to anything.

18 THE COURT: Uh-huh.

19 MR. HAANSTAD: He acknowledged -- as he had to because
20 he was arrested in possession of these firearms -- acknowledged
21 that he had gone and gotten the firearms. But what he wasn't
22 truthful about was whose idea it was. He said it was Mike's.

23 He also wasn't truthful about whether he had discussed
24 a planned attack at the Masonic temple. He denied that for
25 about the first 31 minutes. And as you'll see at that point

1 Mr. Hamzeh literally hangs his head and says, "Okay, I'm going
2 to be honest, honest now," and then discusses the fact that --
3 first of all, he says, as Mr. Albee noted in his submission:
4 "We were all in this together. Nobody led anybody, we were all
5 three responsible."

6 That too is just one step along the way of him coming
7 to -- and it's not uncommon for this to happen in a post-arrest
8 statement --

9 THE COURT: Right.

10 MR. HAANSTAD: A interviewee begins by denying
11 everything and slowly comes around as he's confronted with, for
12 example, evidence against him. So one stop along the way for
13 Mr. Hamzeh was, "All three of us were planning this, no one was
14 leading anybody."

15 But then a little bit further on in the interview he
16 again says, "Okay, now I'm going to be honest, it was me, I
17 planned this. I told them about it. I presented the idea to
18 them."

19 So there are multiple instances like that. And we can
20 highlight those --

21 THE COURT: Sure.

22 MR. HAANSTAD: -- in connection with your view of
23 this --

24 THE COURT: And you did -- I think you folks did in
25 your brief identify exactly that statement, that "this was my

1 idea" --

2 MR. HAANSTAD: Right.

3 THE COURT: -- on using this. But I would appreciate
4 you providing the time hacks because it will make sure that I
5 get a chance to see it. And it also just provides a little more
6 precision that I can cite for the record for the -- ultimately
7 the district judge will probably be making the decision on this,
8 but I'll take the first crack.

9 MR. HAANSTAD: Right.

10 THE COURT: All right. Anything further?

11 MR. HAANSTAD: No, Your Honor. Thank you.

12 THE COURT: Very well. Ms. Mahmoudi, was there
13 anything further that you wanted me to hear about?

14 PROBATION OFFICER: No, Your Honor.

15 THE COURT: All right. Tell me this. Give me your
16 thoughts just as to whether it can be done. And again I'm not
17 saying I'm going to do this, but in your view would I have the
18 capacity to order -- I know that if I had concerns about
19 Mr. Hamzeh's competence to stand trial I could send him to
20 Butner or a Bureau of Prisons facility where we have appropriate
21 psychological services and have Mr. Hamzeh evaluated for
22 competence. Are you aware of a similar authority to have him
23 evaluated -- Mr. Hamzeh evaluated for a dangerousness or
24 anything of that nature?

25 PROBATION OFFICER: I am not aware.

1 THE COURT: Okay. All right. Maybe I'll make it up.
2 Okay. It would not be the first time.

3 Let me hear from you, Mr. Albee.

4 MR. ALBEE: One moment.

5 THE COURT: Sure, take your time.

6 (Brief pause.)

7 THE COURT: Thank you. Okay. Got it.

8 (Brief pause.)

9 MR. ALBEE: Judge, first I wanted to follow up on a
10 question the court asked at the end of my remarks about the two
11 guns. Just to be clear, one of those guns was targeted for
12 Steve.

13 THE COURT: Right.

14 MR. ALBEE: He was the purchaser. Mr. Hamzeh could
15 only come up with \$270 ultimately for a gun. And it was on the
16 morning I believe of the arrest on the way there where he was
17 saying -- questioning why a silencer was needed and asking that
18 if they had a smaller -- a smaller gun. Throughout it had
19 been -- and we provided that in the December 7th and 14th
20 conversations.

21 He wanted a handgun. And it's Mike who repeatedly
22 comes back to it and pushes -- and pushes the machine gun.
23 There just isn't anything here about him -- about Mr. Hamzeh
24 devising some plan to get machine guns; it's the government who
25 dictates it. And in that post-arrest statement they ask him:

1 "Well, why would you get an automatic?"

2 He says: "Well, the automatic was cheaper."

3 I mean, that's what's going on here is that they're --
4 you know, that's what he's being told.

5 In terms -- I guess also we're considering when
6 there's this characterization of him as a lone wolf, what's he
7 doing by himself, he's not joining -- he's not communicating
8 with some group, he's not -- he doesn't have weapons at home, he
9 doesn't have ammunition at home, he's not stockpiling anything.

10 You know, he's not a felon, he can walk in anyplace
11 and buy a handgun. And he has a legitimate need for one. He's
12 a delivery driver to some rough neighborhoods and he has people
13 getting car-jacked who he works with. He's got a legitimate
14 reason for wanting to have a gun and yet he still doesn't even
15 do that.

16 When it's trying to be characterized as he devised and
17 planned this. Well, even you look at that last -- the night
18 before his arrest and they're pushing back, "you're scared."

19 "Oh, why would you believe that Imam?" I mean that's the kind
20 of stuff that's been going on all the time. I mean he's not
21 devising and planning, he's being manipulated and pushed.

22 Whenever he has a proper instinct they're like, well, I don't
23 understand your proper instinct. You know, they try to push him
24 back into the other direction.

25 The questions about worries about being caught. And I

1 guess Mr. Haanstad said, well, if he doesn't know enough to know
2 that it's wrong, well, he had been brainwashed into believing
3 that this is ISIS. And we all think ISIS is a pretty horrible
4 thing and might want to take action if we thought somebody was
5 really -- really ISIS. But at the same time he met these people
6 and he sees that they're human.

7 And he also in talking about that post-arrest
8 statement, he fully believed that he was going to get the Imams
9 to say what he wanted. And he says if they had said I could do
10 it I would have gone to another Imam. He's looking for the
11 answer so he can go back to them with something that isn't just
12 his opinion, but something stronger. And, of course, any --
13 they act like it was 50/50 what the Imam was gonna say. Every
14 Imam, like every priest and every rabbi, was gonna say you're
15 out of your mind, that's wrong. And Mr. Hamzeh knew that. And
16 that's what was gonna -- that was what was gonna happen. And
17 that's what he did. It's exactly what we want from people when
18 they're struggling is to go to their spiritual leader and follow
19 up.

20 THE COURT: Mr. Albee, let me ask you though because,
21 again, timing is important from my perspective anyway. I take
22 your point that Mr. Hamzeh goes to the Masonic Center and sees
23 that these are real people and has this epiphany of some kind.
24 But is it -- tell me what's your understanding of how the record
25 sits. Is it the fact that the tour occurs and then the

1 statements are made about needing to shoot the receptionist in
2 the stomach so that it would show that she slumps forward? I
3 mean is it the visit and then the --

4 MR. ALBEE: I don't know. Those are all wrapped up
5 together. I'm not gonna say that there weren't some
6 statements -- statements after that. But it's Mr. Hamzeh
7 pondering this. He talks in the post-arrest statement about
8 sleepless nights and like this is wrong.

9 And again, the -- the degree to which it's a
10 heartfelt -- and the anger that he has that they won't -- that
11 they won't listen to him on this.

12 He also says in that post-arrest statement is, "I
13 thought we were joking at first." And, you know, the -- you
14 know, there's just a lot of this loose talk. And if they try to
15 characterize him as a leader, well, who is he leading? Two guys
16 who are not gonna -- are not gonna act normal or, you know,
17 they're trying to push this.

18 And there's an effort to equate leadership with being
19 a loud mouth. And we all know that they're not one in the same.
20 The loudest person isn't the leader. These people know it's
21 being recorded and want Mr. Hamzeh to talk. They want to take
22 advantage of the fact that, you know, he's -- you know,
23 unfortunately I think some of the Journal articles referenced it
24 that Mr. Hamzeh is a bit of an attention seeker. He's -- you
25 know, that's the kind of guy he is. And, you know, for better

1 or for worse, I mean, he's a talker.

2 And I think then the other point is when he's -- the
3 quotations from the government about like -- I can't remember
4 how they go, you know, suggesting that he was in charge of it
5 and they followed him? Well, that's because they want to
6 follow -- you know, again, they're not real people, they're
7 fakes. But he -- Mr. Hamzeh really wants to take responsibility
8 for "I stopped it." "I was in charge, I stopped it."

9 He's not throwing his friends under the bus, he's like
10 "I stopped it, it was over." And that's -- that is the one
11 point where Mr. Hamzeh truly was a leader against two people who
12 are working against him, trying to undermine all of his better
13 instincts, and not stepping -- you know, nobody stepped in four
14 months earlier and, you know, tried to guide him, have somebody
15 at the mosque intervene or anything else.

16 And, but Mr. Hamzeh's better instincts prevailed, he
17 said, "I won't do this" and got angry about it and did the right
18 thing.

19 Obviously getting the guns, bad idea. We think he was
20 entrapped on all that after months of pushing him to get a
21 machine gun instead of the handgun that he talked about.

22 He also in terms of why he's getting the gun, he had
23 been -- Mr. -- Mike had been taking them to go target shooting.
24 That was something he introduced that Mr. Hamzeh didn't do
25 before and he said let's go up north and shoot -- and, you know,

1 have fun with these -- have fun with these guns. And while
2 Mr. Haanstad characterizes them as offensive weapons, certainly
3 they can be used for target shooting. I think many firearms
4 enthusiasts would love to be able to go shoot a machine gun out
5 in the woods if they had the opportunity. And I think there's
6 an opinion by Justice Thomas in a dissent where he talked about
7 5 million people owning semiautomatics. And certainly that's a
8 long-standing debate within this country as to whether those are
9 offensive or defensive or whether they should be allowed or not
10 allowed. I mean it's not as clearcut as the government would
11 have it.

12 One moment, Your Honor.

13 (Brief pause.)

14 MR. ALBEE: That's all I have, Judge, other than I
15 would note Mr. Bugni had more direct communication with
16 Mr. Robbins in this case and if the court had any other
17 questions about Dr. Robbins Mr. Bugni could address those.

18 THE COURT: Thank you very much, Mr. Albee.

19 And Mr. Bugni, I appreciate you making yourself
20 available. I won't -- I won't have a lot of questions. But
21 approximately, to your knowledge, how long did Dr. Robbins have
22 an opportunity to spoke with Mr. Hamzeh?

23 MR. BUGNI: I believe he had about five hours.

24 THE COURT: Okay. One visit though?

25 MR. BUGNI: It was one visit. He also reviewed the

1 transcripts. We gave him access to I would say most if not all
2 of the discovery.

3 And if I can just address --

4 THE COURT: Please.

5 MR. BUGNI: -- one of the court's prior questions.

6 THE COURT: Of course.

7 MR. BUGNI: What you're looking here for is a lack of
8 empathy. That's what's characteristic with a lone wolf. That's
9 what's characteristic with the psychoses.

10 And Mr. Hamzeh is adamant that we say, you know, he
11 displays empathy. He displays empathy both before his arrest
12 when he says, "Look, we can't do it." He says it in his
13 post-arrest statement. "I saw them as people. We can't do
14 this. This is wrong. We're gonna go to hell. This is
15 completely wrong." He says it to Dr. Robbins.

16 Your Honor, I know you're blocked, maybe we should
17 have put Mr. Hamzeh in the middle but --

18 THE COURT: No. I can see.

19 MR. BUGNI: This is not a man who's just, you know,
20 coldhearted. And when you think about what does this man stand
21 to you before -- or stand before you today, this man has got
22 true empathy. This is a man who if he's released I don't think
23 he's ever uttering those words again. But he's definitely not
24 doing anything upon those words.

25 And when you think about those combination of

1 conditions and what Mr. Robbins is trying to get across -- or
2 Dr. Robbins is trying to get across, it's that here is a person
3 who's learned from his mistakes. Here's a person who spoke vile
4 talk, but that vile talk can't be taken out of context.

5 And, Your Honor, I know we dropped a lot of footnotes
6 in our very large brief.

7 THE COURT: Uh-huh.

8 MR. BUGNI: This was one in particular. And, you
9 know, there's lots of decisions in a 60-page brief about what
10 you're going to really stress. But footnote 132. And it's a
11 phenomenon actually in different cultures that's foreign to us
12 usually in Wisconsin. We don't really have much hatred. We
13 don't really think in those terms.

14 But we cited to the treatment or the discussion down
15 in Miami of the Cuban exiles and how here were the businessmen,
16 judges, lawyers, and they would gather at this Versai Cafe and
17 they would talk in-depth about how they would kill the
18 communists, how they would take down Castro. None of them would
19 ever act on that. They're politicians, they're lawyers, they're
20 good people, people we would all hang out with. But it's of a
21 different culture.

22 And that's what Robbins -- Robbins is not meant to be
23 dismissed. This is a doctor who took a lot of time and has a
24 good feel for this and a lot of experience. It's to say here is
25 part of his culture. Somebody from Palestine has endured what

1 Israel has subjected them to for a very long time and he has
2 hardened views of that. And that even comes across in the
3 post-arrest statement.

4 But to take his statements of those that we might
5 speak and try to attribute that same kind of background is
6 mistaken. And that's what Dr. Robbins' last point is about. We
7 don't really have anything that we can compare that to. The
8 best we can have is our hatred for an opposing football team.
9 But that falls far short. And that's why we went with that
10 footnote there.

11 In other cultures there is a discussion about violence
12 in a way that is divorced from reality but is just so ingrained
13 in the way they speak. And here's a man who spent pretty much
14 his entire life in Palestine. And that's what those comments
15 are directed towards, not towards America. And throughout our
16 brief we tried to show this is a guy who has had no attack
17 against America, no violence here. It was only when the Masons
18 were equated with ISIS and being the enemies of Islam that he
19 did.

20 THE COURT: Understood. All right.

21 MR. HAANSTAD: Your Honor, if I could have just --

22 THE COURT: Please.

23 MR. HAANSTAD: -- a couple of minutes?

24 THE COURT: Of course you can.

25 MR. HAANSTAD: First you had asked about the timing of

1 the quotes compared to the tour of the Masonic temple.

2 THE COURT: Yeah.

3 MR. HAANSTAD: Every quote that the government
4 included in its brief from January 19th was after the tour of
5 the temple.

6 THE COURT: Right.

7 MR. HAANSTAD: There's been some discussion about
8 Mr. Hamzeh's requests for handguns versus machine guns. That's
9 not an either-or. He was requesting both for different reasons
10 at different times. And it's because he wanted a handgun for
11 protection. I think a fellow delivery driver had been held up.

12 THE COURT: That's right.

13 MR. HAANSTAD: And that caused him some concern,
14 understandably, so he was looking for a handgun for that reason.
15 But at the same time he was also seeking out machine guns. And
16 it's for that reason that when the defense talks about
17 Mr. Hamzeh's proper instinct being -- you know, going toward,
18 for example, handguns rather than machine guns, when that
19 happens these confidential sources were pushing him back towards
20 machine guns, that's not really what they were doing.

21 I mean you had a guy here in Hamzeh who, going back to
22 September of 2015, had been talking about a variety of different
23 types of armed attacks that he was going to commit. And that's
24 what kicked off this investigation in the first place.

25 So when he's talking about that and when his plan

1 seems to keep on changing but he's still consistently talking
2 about going to the Middle East at times, you know, using a
3 handgun to shoot and kill Israeli soldiers, grab their machine
4 guns and kill more people, given all that, with the confidential
5 source, it's actually very reasonable for law enforcement -- and
6 it's good law enforcement to have confidential sources try to
7 flush that out a little bit to see what the criminal's true
8 intent is.

9 Also, this reference to confidential sources as fakes,
10 that is, you know, Hamzeh wasn't really leading anybody because
11 these people were working with the government. I mean that's
12 true in a technical legal sense. For example, you can't
13 conspire with government agents.

14 THE COURT: Right.

15 MR. HAANSTAD: But I think the significance here is
16 that Hamzeh doesn't know that they're sources at the time. So
17 when Hamzeh is directing them, here's what we're going to do at
18 the temple, here's when we're going to do it, here's how we're
19 going to do it, why we're going to do it, here is your role,
20 Steve, here is your role, Mike, I mean, he's showing true
21 dangerousness by doing those things not knowing that he's
22 talking to confidential -- confidential sources.

23 And just a very minor point but, again, Hamzeh's
24 discussions about engaging in some sort of acts of violence date
25 back to September and October of 2015.

1 THE COURT: Right.

2 MR. HAANSTAD: And Mr. Albee both said and wrote that
3 there's no indication in the discovery that he did anything
4 other than just talk about that. Like I said, it's a maybe a
5 relatively minor point, but he did settle on October 21st as a
6 travel date and he told the confidential sources that he was
7 traveling on October 21st.

8 He also, in the discovery there's an e-mail where he
9 reserved a flight for October 21st. His explanation to the
10 sources had been that he was going to travel there with his
11 brother-in-law. His brother-in-law actually -- and maybe his
12 sister as well. He or they actually ended up traveling on the
13 21st. They all had reservations, that is, for the 21st. Hamzeh
14 just didn't show up and actually get a ticket.

15 But that was just a step along the way. So he's
16 becoming increasingly specific and serious about doing
17 something. It starts out as just talk, develops to the point
18 where he settles on a date, he's going to travel with relatives,
19 gets a reservation. And it keeps progressing from there up
20 through January of 2016.

21 We talked a lot about the tour and the statements
22 after it. But also three days before the tour -- this level of
23 violence pales in comparison maybe to some of the things we've
24 been talking about -- but there was an incident where Mr. Hamzeh
25 was driving on Wisconsin Avenue, an unknown pedestrian walked in

1 front of him and kicked Hamzeh's car. Hamzeh jumped out of the
2 car leaving the driver's side door open, roundhouse kicked this
3 individual in the head, knocked him to the ground, jumped on
4 him, punched him and kicked him and didn't stop until he was
5 pulled off by another pedestrian. And then, of course, three
6 days later is when he's talking about this additional -- these
7 additional violent acts.

8 And that's all I had, Your Honor. Thank you.

9 THE COURT: Appreciate that. Well, it's not all
10 because you're going to also give me the time hacks and your
11 views on. So you'll have an opportunity to say some additional
12 things.

13 I know that there was -- there are very few arguments
14 that I left thinking where I didn't have the thought, oh, I wish
15 I had said this. So to the extent you have "I wish I had said
16 this" sort of inspirations after the hearing today, go ahead and
17 include it in whatever you're gonna send me by the end of the
18 day tomorrow.

19 MR. HAANSTAD: Thank you.

20 THE COURT: You bet.

21 Mr. Albee, any response?

22 MR. ALBEE: [Indiscernible].

23 THE COURT: Sure.

24 MR. ALBEE: Mr. Haanstad talks about good law
25 enforcement because there's the statement about using a handgun,

1 shooting Israeli soldiers and taking their machine guns. That's
2 a lot of bravado. That's something that just wasn't gonna
3 happen.

4 But even let's accept that as, well, that provides a
5 foundation to follow up if he's interested in machine guns, even
6 though we're talking Middle East versus do you want a machine
7 gun here. And Mike says, "Do you want a machine gun?" "No,
8 just a handgun." And that happened several times. "No, just a
9 handgun."

10 So good law enforcement would be like let's leave it
11 alone, instead of pushing, pushing, pushing. And what he pushes
12 Mr. Hamzeh to do -- and this is in our brief: "You keep asking
13 me the same stupid questions over and over. You are stupid and
14 a mother." So I mean he's -- that illustrates what's not been
15 recorded because Mr. Hamzeh has just had it with the things
16 being brought up over and over.

17 As to October 24th, one quick -- or 21st one. He was
18 saying he bought a plane ticket, there is no plane ticket. I
19 mean he's -- and he's just -- he says things, they don't happen.
20 They were never intended to happen. He's an attention seeker.
21 He's learned his lesson about that I'm sure.

22 THE COURT: All right. All right. And also I --
23 again I appreciate your points about good or bad law
24 enforcement, but that's not a judgment I'm going to make.
25 Everybody understands that in cases of this kind, you know,

1 it's -- if you don't have appropriate follow-up and something
2 bad happens then everybody's pointing a finger.

3 So I'm not going to be in a position -- I'm not
4 certainly qualified to make a judgment as to whether it's good
5 law enforcement or bad law enforcement. What I will have to do
6 and what I will do is make an assessment as to whether I can
7 release on conditions and reasonably assure the safety of the
8 public. And in that decision I will have to determine whether
9 the United States has shown by clear and convincing evidence
10 that detention is the only status that is appropriate.

11 All right. Ms. Mahmoudi, you've had to sit quiet for
12 most of the hearing, was there anything else that you wanted me
13 to know at this point?

14 PROBATION OFFICER: No, Your Honor.

15 THE COURT: You're done? Good. All right.

16 Then I will ask you folks to provide me with -- and
17 again, make it as informal as an e-mail. If you want to put it
18 on your paper that's fine and send me a PDF. But just provide
19 it by the end of the day. If you need a little more extra time
20 I'm not gonna make a decision until I see what you have for me
21 and I'll make sure that I look at stuff.

22 MR. ALBEE: End of day tomorrow is what the court --

23 THE COURT: Correct, yes. Not today. No, I wouldn't
24 do that to you. But again, if you need more time just talk to
25 each other because I don't want one side seeing the other's.

1 Make them relatively simultaneous. And be on the same
2 timeframe. You folks have worked professionally.

3 All right. I thank you very much for the
4 professionalism of both your written submissions and of your
5 oral argument. This is a sensitive case and we live in
6 sensitive times. But you both have conducted yourselves, the
7 United States and defense, with the highest degree of
8 professionalism and I appreciate that. I think it does credit
9 to your offices and it certainly shows respect for the office of
10 the court that I very much appreciate.

11 And I also thank you, the folks in the gallery. I'm
12 not used to having this many people. I know that this case is
13 very important to you and you've had to listen to some hard
14 things on both sides. But you also maintained the respect of
15 the court and I appreciate that very much.

16 All right. Thank you very much. We're done.

17 (Hearing concluded at 11:14 a.m.)

18 * * *

C E R T I F I C A T E

I, JOHN T. SCHINDHELM, RMR, CRR, Official Court Reporter and Transcriptionist for the United States District Court for the Eastern District of Wisconsin, do hereby certify that the foregoing pages are a true and accurate transcription of the audio file provided in the aforementioned matter to the best of my skill and ability.

Signed and Certified July 28, 2017.

/s/John T. Schindhelm

John T. Schindhelm

John T. Schindhelm, RPR, RMR, CRR
United States Official Reporter
517 E Wisconsin Ave., Rm 236,
Milwaukee, WI 53202
Website: WWW.JOHNSCHINDHELM.COM

